

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KIRK DAHL, et al., <div style="text-align: center;">Plaintiffs,</div> <div style="text-align: center;">v.</div> BAIN CAPITAL PARTNERS, LLC, et al., <div style="text-align: center;">Defendants.</div>))))))))))	No. 1:07-cv-12388-WGY ORAL ARGUMENT REQUESTED
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**DEFENDANTS TC GROUP III, L.P. AND TC GROUP IV, L.P.’S
MOTION FOR SUMMARY JUDGMENT ON IMPACT**

Pursuant to Fed. R. Civ. P. 56, and Local Rules 56.1 and 7.1, defendants TC Group III, L.P. and TC Group IV, L.P. (collectively, “Carlyle”) respectfully move for summary judgment as to impact.¹ As set forth in more detail in the accompanying memorandum of law, the grounds for this motion are as follows: To succeed on their claims, plaintiffs must prove the fact of injury; in antitrust parlance, this element of plaintiffs’ claim is called “impact”, or “causation”. To prove impact, plaintiffs must demonstrate, with evidence, that there was an actual causal link between the alleged conspiracy and the harm that they claim. Plaintiffs do not have any evidence from which a reasonable jury could conclude that the alleged conspiracy among seven private equity firms not to submit topping bids for eight announced proprietary deals actually caused the share prices in each of those deals to be lower than they otherwise would have been. Therefore, Carlyle is entitled to summary judgment on all of plaintiffs’ claims.

¹ This motion is Carlyle’s first opportunity to move for summary judgment since plaintiffs have offered their proposed methodology for proving impact and damages. Thus, while Carlyle has previously moved for summary judgment on other grounds, this is the first time the Court has contemplated whether plaintiffs can sustain their burden of coming forward with *facts* sufficient to support their claims of impact.

In support of this motion, Carlyle relies on the following documents, all of which are being filed contemporaneously herewith: (i) Defendants TC Group III, L.P. and TC Group IV, L.P.'s Memorandum in Support of Motion for Summary Judgment on Impact; (ii) Declaration of Allan M. Holt in Support of Defendants TC Group III, L.P. and TC Group IV, L.P.'s Motion for Summary Judgment on Impact; (iii) Declaration of William E. Conway, Jr. in Support of Defendants TC Group III, L.P. and TC Group IV, L.P.'s Motion for Summary Judgment on Impact; (iv) Declaration of Margaret M. Zwisler in Support of Defendants TC Group III, L.P. and TC Group IV, L.P.'s Motion for Summary Judgment on Impact (together with exhibits thereto); (v) Defendants TC Group III, L.P. and TC Group IV, L.P.'s Local Rule 56.1 Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

WHEREFORE, for all of the above-stated reasons, Carlyle respectfully requests that the Court grant this motion and:

- (i) Enter judgment for Carlyle dismissing Counts One and Two of the Fifth Amended Complaint with prejudice; and
- (ii) Such other and further relief as this Court deems just and appropriate.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Carlyle respectfully requests a hearing for the presentation of oral argument regarding the present Motion for Summary Judgment.

Dated: August 1, 2014

Respectfully Submitted,

/s/ Margaret M. Zwisler

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), the undersigned hereby certifies that Carlyle's counsel has conferred with plaintiffs' counsel and has attempted in good faith to resolve or narrow the issues involved in this motion, but was unable to do so.

/s/ Margaret M. Zwisler

Margaret M. Zwisler (admitted *pro hac vice*)

CERTIFICATE OF SERVICE

I, Margaret M. Zwisler, hereby certify that the foregoing Defendants TC Group III, L.P. and TC Group IV, L.P.'s Motion for Summary Judgment on Impact was served upon the attorneys of record for each party by transmission through the Court's electronic case filing system.

Dated: August 1, 2014

/s/ Margaret M. Zwisler

Margaret M. Zwisler (admitted *pro hac vice*)